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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,299	02/06/2004	Brian Cox	388700-612-05-CIP2	5453
37374	7590	10/29/2009	EXAMINER	
INSKEEP INTELLECTUAL PROPERTY GROUP, INC 2281 W. 190TH STREET SUITE 200 TORRANCE, CA 90504			MASHACK, MARK F	
ART UNIT	PAPER NUMBER			
			3773	
NOTIFICATION DATE	DELIVERY MODE			
10/29/2009	ELECTRONIC			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[inskeepstaff@inskeeplaw.com](mailto:inskeepstaff@inskeeplaw.com)

<b>Office Action Summary</b>	<b>Application No.</b> 10/774,299	<b>Applicant(s)</b> COX ET AL.
	<b>Examiner</b> MARK MASHACK	<b>Art Unit</b> 3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 June 2009.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-29 is/are pending in the application.  
 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 13-29 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/DS/02)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

### **DETAILED ACTION**

This office action is in response to a communication dated 6/18/2009. Claims 1-29 are pending. Claims 1-12 have been withdrawn.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claim 29** is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not describe "allowing said deployment tube to contract around a proximal end of said coupling element, thereby expelling said coupling element from said deployment tube".

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. **Claims 13, 17-21, 25-28** are rejected under 35 U.S.C. 102(b) as being anticipated by Kupiecki et al. ("Kupiecki" US 5,669,931).

Kupiecki discloses a method of deploying a filamentous endovascular device into a target vascular site, comprising providing an elongate, flexible, hollow deployment tube **20** having a lumen; providing a filamentous endovascular device having a proximal end **24** and a coupling element **26** being releasably attached to the deployment tube adjacent the open distal end thereof, the coupling element being formed with a purge passage; ( FIG 4A; the distal end of the device is considered the "coupling element" and "formed with" only requires a relationship but the distal end of the device also has a helical purge passage extending through); purging air from the lumen by introducing a purging liquid through the lumen with a pressure sufficient to displace air from the lumen through the purge passage but not sufficient to separate the endovascular device from the deployment tube (Column 9, Line 57, - Column 10, Line 8); introducing the endovascular device intravascularly while it is attached to the deployment tube; separating the endovascular device from the deployment tube without radially expanding the deployment tube by injecting a liquid into the proximal end of the lumen (Column 10, Lines 10-26). The deployment tube comprises a retention sleeve **64**. The saline inherently reduces friction between said coupling element and said deployment tube. The coupling element comprises a water-soluble plug which would inherently soften in the presence of the purging liquid.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claims 14 and 22-24** rejected under 35 U.S.C. 103(a) as being unpatentable over **Kupiecki** in view of **Eder (US 6,063,070)**.

**Kupiecki** discloses all of the claimed limitations as disclosed above except for the steps of: (f) generating an electrical signal in response to the separation of the endovascular device from the deployment tube. However, **Eder** teaches of deployed an indicator circuit to monitor the progression of the coil detachment (Column 3, Lines 18-27). The coil would inherently be a component of the circuit and when the detachment of the coil would alter the circuit in some manner. All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at

the time of the invention. Given the teachings of **Eder**, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of **Kupiecki** with by generating an electrical signal in response of the separation of the endovascular device from the deployment tube. Doing so would provide feedback to the user of the separation.

6.     **Claims 15-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kupiecki** in view of **Ressemann et al. ("Ressemann" US 6,224,609)**.

**Kupiecki** discloses all of the claimed limitations as stated above including the purge passage being dimensioned so as to provide a substantial restriction to the flow therethrough of a liquid having a viscosity greater than or equal to a predetermined viscosity. However, **Kupiecki** does not explicitly disclose the use of a contrast agent. However, **Ressemann** discloses that it is commonly known in the art to use a combination of saline and a contrast agent in order to visualize an area in the vasculature (Column 8, Lines 16-18). All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Given the teachings of **Ressemann**, it would have been obvious to provide a contrast agent with the saline of **Kupiecki** to provide assist in the tracking and visualization of the deployment device.

7. **Claims 25 and 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Naglreiter (US 6,514,264)** in view of **Martinez et al. ("Martinez" US 5,593,412)**.

**Naglreiter** discloses a method of deploying a filamentous endovascular device into a target vascular site, comprising the steps of: (a) providing an elongated, flexible, hollow deployment tube **116** having an open proximal end, distal section terminating in an open distal end, and a lumen **124** defined between the proximal and distal ends; (b) providing a filamentous endovascular device **106** and a coupling element **122** attached to the proximal end, the coupling element being releasably attached to the deployment tube adjacent the open distal end thereof, the coupling element being formed with a purge passage **126**; (c) purging air from the by introducing a purging liquid through the lumen with a pressure sufficient to displace air from the lumen through the purge passage but not sufficient to separate the endovascular device from the deployment tube (Column 5, Lines 43-53); (d) introducing the endovascular device intravascularly to the target vascular site while it is attached to the deployment tube; (e) injecting a liquid into the proximal end of the lumen to separate the endovascular device from the deployment tube in response to the liquid pressure applied to the coupling element through the open distal end of the deployment tube (Column 3, Lines 28-35 and Column 6, Lines 26-33). The coupling element is releasably held by a retention sleeve **108** fixed to the distal section of the deployment tube and contracted over the coupling element.

**Naglreiter** discloses of the sleeve being of increased softness but does not explicitly disclose of softening it with a fluid injection. However, **Martinez** discloses of a method of deploying a stent comprising retaining the stent the distal end of a sheath and softening

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it with a fluid injection (Column 3, Lines 1-17). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Naglreiter with softening the distal end to retain the device in the sleeve and facilitate deployment.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK MASHACK whose telephone number is (571)270-3861. The examiner can normally be reached on Monday-Thursday 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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